

105TH CONGRESS
1ST SESSION

S. 827

To promote the adoption of children in foster care.

IN THE SENATE OF THE UNITED STATES

JUNE 3, 1997

Mr. CRAIG introduced the following bill; which was read twice and referred
to the Committee on Finance

A BILL

To promote the adoption of children in foster care.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Adoption Promotion Act of 1997”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Clarification of the reasonable efforts requirement.
- Sec. 3. States required to initiate or join proceedings to terminate parental
rights for certain children in foster care.
- Sec. 4. Adoption incentive payments.
- Sec. 5. Earlier status reviews and permanency hearings.
- Sec. 6. Notice of reviews and hearings; opportunity to be heard.
- Sec. 7. Documentation of reasonable efforts to adopt.
- Sec. 8. Kinship care.
- Sec. 9. Use of the Federal Parent Locator Service for child welfare services.

- Sec. 10. Performance of States in protecting children.
- Sec. 11. Authority to approve more child protection demonstration projects.
- Sec. 12. Technical assistance.
- Sec. 13. Coordination of substance abuse and child protection services.
- Sec. 14. Clarification of eligible population for independent living services.
- Sec. 15. Effective date.

1 **SEC. 2. CLARIFICATION OF THE REASONABLE EFFORTS RE-**
 2 **QUIREMENT.**

3 (a) IN GENERAL.—Section 471(a)(15) of the Social
 4 Security Act (42 U.S.C. 671(a)(15)) is amended to read
 5 as follows:

6 “(15)(A) provides that—

7 “(i) except as provided in clauses (ii) and
 8 (iii), reasonable efforts shall be made—

9 “(I) before a child is placed in foster
 10 care, to prevent or eliminate the need to
 11 remove the child from the child’s home;
 12 and

13 “(II) to make it possible for the child
 14 to return home;

15 “(ii) if continuation of reasonable efforts of
 16 the type described in clause (i) is determined to
 17 be inconsistent with the permanency plan for
 18 the child, reasonable efforts of the type required
 19 by clause (iii)(II) shall be made;

20 “(iii) if a court of competent jurisdiction
 21 has determined that the child has been sub-
 22 jected to aggravated circumstances (as defined

1 by State law, which definition may include
2 abandonment, torture, chronic abuse, and sex-
3 ual abuse) or parental conduct described in sec-
4 tion 106(b)(2)(A)(xii) of the Child Abuse Pre-
5 vention and Treatment Act, or that the paren-
6 tal rights of a parent with respect to a sibling
7 of the child have been terminated involuntar-
8 ily—

9 “(I) reasonable efforts of the type de-
10 scribed in clause (i) shall not be required
11 to be made with respect to any parent of
12 the child who has been involved in subject-
13 ing the child to such circumstances or such
14 conduct, or whose parental rights with re-
15 spect to a sibling of the child have been
16 terminated involuntarily; and

17 “(II) if reasonable efforts of the type
18 described in clause (i) are not made or are
19 discontinued, reasonable efforts shall be
20 made to place the child for adoption, with
21 a legal guardian, or (if adoption or legal
22 guardianship is determined not to be ap-
23 propriate for the child) in some other
24 planned, permanent living arrangement;
25 and

1 “(iv) reasonable efforts of the type de-
 2 scribed in clause (iii)(II) may be made concu-
 3 rently with reasonable efforts of the type de-
 4 scribed in clause (i); and

5 “(B) in determining the reasonable efforts
 6 to be made with respect to a child and in mak-
 7 ing such reasonable efforts, the child’s health
 8 and safety shall be of paramount concern;”.

9 (b) CONFORMING AMENDMENT.—Section 472(a)(1)
 10 of such Act (42 U.S.C. 672(a)(1)) is amended by inserting
 11 “for a child” before “have been made”.

12 **SEC. 3. STATES REQUIRED TO INITIATE OR JOIN PROCEED-**
 13 **INGS TO TERMINATE PARENTAL RIGHTS FOR**
 14 **CERTAIN CHILDREN IN FOSTER CARE.**

15 (a) IN GENERAL.—Section 475(5) of the Social Secu-
 16 rity Act (42 U.S.C. 675(5)) is amended—

17 (1) by striking “and” at the end of subpara-
 18 graph (C);

19 (2) by striking the period at the end of sub-
 20 paragraph (D) and inserting “; and”; and

21 (3) by adding at the end the following:

22 “(E) in the case of a child who has not at-
 23 tained 10 years of age and has been in foster
 24 care under the responsibility of the State for 18
 25 months of the most recent 24 months, the State

shall file a petition to terminate the parental rights of the child’s parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), unless—

“(i) at the option of the State, the child is being cared for by a relative;

“(ii) a State court or State agency has documented a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

“(iii) the State has not provided to the family of the child such services as the State deems appropriate, if reasonable efforts of the type described in section 471(a)(15)(A)(i) are required to be made with respect to the child.”.

(b) LIMITATION ON APPLICABILITY.—The amendments made by subsection (a) shall apply only to children entering foster care on or after October 1, 1997.

SEC. 4. ADOPTION INCENTIVE PAYMENTS.

Part E of title IV of the Social Security Act (42 U.S.C. 670–679) is amended by inserting after section 473 the following:

1 **“SEC. 473A. ADOPTION INCENTIVE PAYMENTS.**

2 “(a) GRANT AUTHORITY.—Each State that is an in-
3 centive-eligible State for a fiscal year shall be entitled to
4 receive from the Secretary in the immediately succeeding
5 fiscal year a grant in an amount equal to the adoption
6 incentive payment.

7 “(b) INCENTIVE-ELIGIBLE STATE.—A State is an in-
8 centive-eligible State for a fiscal year if—

9 “(1) the State has a plan approved under this
10 part for the fiscal year;

11 “(2) the number of foster child adoptions in the
12 State during the fiscal year exceeds the base number
13 of foster child adoptions for the State for the fiscal
14 year;

15 “(3) the State is in compliance with subsection
16 (c) for the fiscal year; and

17 “(4) the fiscal year is any of fiscal years 1998
18 through 2002.

19 “(c) DATA REQUIREMENTS.—

20 “(1) IN GENERAL.—A State is in compliance
21 with this subsection for a fiscal year if the State has
22 provided to the Secretary the data described in para-
23 graph (2) for fiscal year 1997 (or, if later, the fiscal
24 year that precedes the 1st fiscal year for which the
25 State seeks a grant under this section) and for each
26 succeeding fiscal year.

1 “(2) DETERMINATION OF NUMBERS OF ADOPT-
2 TIONS.—

3 “(A) DETERMINATIONS BASED ON AFCARS
4 DATA.—Except as provided in subparagraph
5 (B), the Secretary shall determine the numbers
6 of foster child adoptions and of special needs
7 adoptions in a State during each of fiscal years
8 1997 through 2002, for purposes of this sec-
9 tion, on the basis of data meeting the require-
10 ments of the system established pursuant to
11 section 479, as reported by the State in May of
12 the fiscal year and in November of the succeed-
13 ing fiscal year, and approved by the Secretary
14 by April 1 of the succeeding fiscal year.

15 “(B) ALTERNATIVE DATA SOURCES PER-
16 MITTED FOR FISCAL YEAR 1997.—For purposes
17 of the determination described in subparagraph
18 (A) for fiscal year 1997, the Secretary may use
19 data from a source or sources other than that
20 specified in subparagraph (A) that the Sec-
21 retary finds to be of equivalent completeness
22 and reliability, as reported by a State by No-
23 vember 30, 1997, and approved by the Sec-
24 retary by March 1, 1998.

1 “(3) NO WAIVER OF AFCARS REQUIREMENTS.—

2 This section shall not be construed to alter or affect
3 any requirement of section 479 or any regulation
4 prescribed under such section with respect to report-
5 ing of data by States, or to waive any penalty for
6 failure to comply with the requirements.

7 “(d) ADOPTION INCENTIVE PAYMENT.—

8 “(1) IN GENERAL.—Except as provided in para-
9 graph (2), the adoption incentive payment payable to
10 a State for a fiscal year under this section shall be
11 equal to the sum of—

12 “(A) \$4,000, multiplied by amount (if any)
13 by which the number of foster child adoptions
14 in the State during the fiscal year exceeds the
15 base number of foster child adoptions for the
16 State for the fiscal year; and

17 “(B) \$2,000, multiplied by the amount (if
18 any) by which the number of special needs
19 adoptions in the State during the fiscal year ex-
20 ceeds the base number of special needs adop-
21 tions for the State for the fiscal year.

22 “(2) PRO RATA ADJUSTMENT IF INSUFFICIENT
23 FUNDS AVAILABLE.—If the total amount of adoption
24 incentive payments otherwise payable under this sec-
25 tion for a fiscal year exceeds the amount then avail-

1 able for grants under this section, the amount of the
 2 adoption incentive payment payable to each State
 3 under this section for the fiscal year shall be—

4 “(A) the amount of the adoption incentive
 5 payment that would otherwise be payable to the
 6 State under this section for the fiscal year; mul-
 7 tiplied by

8 “(B) the percentage represented by the
 9 amount then available for grants under this sec-
 10 tion, divided by the total amount of adoption in-
 11 centive payments otherwise payable under this
 12 section for the fiscal year.

13 “(e) 2-YEAR AVAILABILITY OF INCENTIVE PAY-
 14 MENTS.—Payments to a State under this section in a fis-
 15 cal year shall remain available for use by the State
 16 through the end of the succeeding fiscal year.

17 “(f) LIMITATIONS ON USE OF INCENTIVE PAY-
 18 MENTS.—A State shall not expend an amount paid to the
 19 State under this section except to provide to children or
 20 families any service (including post adoption services) that
 21 may be provided under part B or E. Amounts expended
 22 by a State in accordance with the preceding sentence shall
 23 be disregarded in determining State expenditures for pur-
 24 poses of Federal matching payments under section 474.

25 “(g) DEFINITIONS.—As used in this section:

1 “(1) FOSTER CHILD ADOPTION.—The term
2 ‘foster child adoption’ means the final adoption of a
3 child who, at the time of adoptive placement, was in
4 foster care under the supervision of the State.

5 “(2) SPECIAL NEEDS ADOPTION.—The term
6 ‘special needs adoption’ means the final adoption of
7 a child for whom an adoption assistance agreement
8 is in effect under section 473.

9 “(3) BASE NUMBER OF FOSTER CHILD ADOPT-
10 TIONS.—The term ‘base number of foster child
11 adoptions for a State’ means, with respect to a fiscal
12 year, the largest number of foster child adoptions in
13 the State in fiscal year 1997 (or, if later, the 1st fis-
14 cal year for which the State has furnished to the
15 Secretary the data described in subsection (c)(2)) or
16 in any succeeding fiscal year preceding the fiscal
17 year.

18 “(4) BASE NUMBER OF SPECIAL NEEDS ADOP-
19 TIONS.—The term ‘base number of special needs
20 adoptions for a State’ means, with respect to a fiscal
21 year, the largest number of special needs adoptions
22 in the State in fiscal year 1997 (or, if later, the 1st
23 fiscal year for which the State has furnished to the
24 Secretary the data described in subsection (c)(2)) or

1 in any succeeding fiscal year preceding the fiscal
2 year.

3 “(h) APPROPRIATION.—

4 “(1) IN GENERAL.—Out of any money in the
5 Treasury of the United States not otherwise appro-
6 priated, there are appropriated for fiscal years 1999
7 through 2003 such sums as are necessary for grants
8 under this section, in a total amount not to exceed
9 \$108,000,000.

10 “(2) AVAILABILITY.—Amounts appropriated
11 under paragraph (1) shall remain available until ex-
12 pended, but not after fiscal year 2003.”.

13 **SEC. 5. EARLIER STATUS REVIEWS AND PERMANENCY**
14 **HEARINGS.**

15 Section 475(5)(C) of the Social Security Act (42
16 U.S.C. 675(5)(C)) is amended—

17 (1) by striking “eighteen months after” and in-
18 serting “12 months after”;

19 (2) by striking “dispositional” and inserting
20 “permanency”; and

21 (3) by striking “future status of” and all that
22 follows through “long-term basis)” and inserting
23 “permanency plan for the child (including whether
24 (and, if applicable, when) the child will be returned
25 to the parent, the child will be placed for adoption

1 and the State will file a petition to terminate the pa-
 2 rental rights of the parent, a legal guardian will be
 3 appointed for the child, or the child will be placed
 4 in some other planned, permanent living arrange-
 5 ment, including in the custody of another fit and
 6 willing relative)’’.

7 **SEC. 6. NOTICE OF REVIEWS AND HEARINGS; OPPOR-**
 8 **TUNITY TO BE HEARD.**

9 Section 475(5) of the Social Security Act (42 U.S.C.
 10 675(5)), as amended by section 3 of this Act, is amend-
 11 ed—

12 (1) by striking “and” at the end of subpara-
 13 graph (D);

14 (2) by striking the period at the end of sub-
 15 paragraph (E) and inserting “; and”; and

16 (3) by adding at the end the following:

17 “(F) the foster parents (if any) of a child
 18 and any relative providing care for the child are
 19 provided with notice of, and an opportunity to
 20 be heard in, any review or hearing to be held
 21 with respect to the child, except that this sub-
 22 paragraph shall not be construed to make any
 23 foster parent a party to such a review or hear-
 24 ing.”.

1 **SEC. 7. DOCUMENTATION OF REASONABLE EFFORTS TO**
2 **ADOPT.**

3 Section 475(5) of the Social Security Act (42 U.S.C.
4 675(5)), as amended by sections 3 and 6 of this Act, is
5 amended—

6 (1) by striking “and” at the end of subpara-
7 graph (E);

8 (2) by striking the period at the end of sub-
9 paragraph (F) and inserting “; and”; and

10 (3) by adding at the end the following:

11 “(G) in the case of a child with respect to
12 whom the State’s goal is adoption or placement
13 in another permanent home, the steps taken by
14 the State agency to find an adoptive family or
15 other permanent living arrangement for the
16 child, to place the child with an adoptive family,
17 a legal guardian, or in another planned perma-
18 nent living arrangement (including in the cus-
19 tody of another fit and willing relative), and to
20 finalize the adoption or legal guardianship are
21 documented, and such documentation shall in-
22 clude documentation of child specific recruit-
23 ment efforts such as the use of State, regional,
24 and national adoption information exchanges,
25 including electronic information exchange sys-
26 tems.”.

1 **SEC. 8. KINSHIP CARE.**

2 (a) REPORT.—

3 (1) IN GENERAL.—The Secretary of Health and
4 Human Services shall—

5 (A) not later than March 1, 1998, convene
6 the advisory panel provided for in subsection
7 (b)(1) and prepare and submit to the advisory
8 panel an initial report on the extent to which
9 children in foster care are placed in the care of
10 a relative (in this section referred to as “kin-
11 ship care”); and

12 (B) not later than November 1, 1998, sub-
13 mit to the Committee on Ways and Means of
14 the House of Representatives and the Commit-
15 tee on Finance of the Senate a final report on
16 the matter described in subparagraph (A),
17 which shall—

18 (i) be based on the comments submit-
19 ted by the advisory panel pursuant to sub-
20 section (b)(2) and other information and
21 considerations; and

22 (ii) include the policy recommenda-
23 tions of the Secretary with respect to the
24 matter.

25 (2) REQUIRED CONTENTS.—Each report re-
26 quired by paragraph (1) shall—

1 (A) include, to the extent available for each
2 State, information on—

3 (i) the policy of the State regarding
4 kinship care;

5 (ii) the characteristics of the kinship
6 care providers (including age, income, eth-
7 nicity, and race);

8 (iii) the characteristics of the house-
9 hold of such providers (such as number of
10 other persons in the household and family
11 composition);

12 (iv) how much access to the child is
13 afforded to the parent from whom the
14 child has been removed;

15 (v) the cost of, and source of funds
16 for, kinship care (including any subsidies
17 such as medicaid and cash assistance);

18 (vi) the goal for a permanent living
19 arrangement for the child and the actions
20 being taken by the State to achieve the
21 goal;

22 (vii) the services being provided to the
23 parent from whom the child has been re-
24 moved; and

1 (viii) the services being provided to
2 the kinship care provider; and

3 (B) specifically note the circumstances or
4 conditions under which children enter kinship
5 care.

6 (b) ADVISORY PANEL.—

7 (1) ESTABLISHMENT.—The Secretary of Health
8 and Human Services, in consultation with the Chair-
9 man of the Committee on Ways and Means of the
10 House of Representatives and the Chairman of the
11 Committee on Finance of the Senate, shall convene
12 an advisory panel which shall include parents, foster
13 parents, former foster children, State and local pub-
14 lic officials responsible for administering child wel-
15 fare programs, private persons involved in the deliv-
16 ery of child welfare services, representatives of tribal
17 governments and tribal courts, judges, and academic
18 experts.

19 (2) DUTIES.—The advisory panel convened pur-
20 suant to paragraph (1) shall review the report pre-
21 pared pursuant to subsection (a), and, not later than
22 July 1, 1998, submit to the Secretary comments on
23 the report.

1 **SEC. 9. USE OF THE FEDERAL PARENT LOCATOR SERVICE**
2 **FOR CHILD WELFARE SERVICES.**

3 Section 453 of the Social Security Act (42 U.S.C.
4 653) is amended—

5 (1) in subsection (a)—

6 (A) by striking “or enforcing child custody
7 or visitation orders” and inserting “or making
8 or enforcing child custody or visitation orders”;
9 and

10 (B) in paragraph (1)—

11 (i) by striking the comma at the end
12 of subparagraph (C) and inserting “; or”;
13 and

14 (ii) by inserting after subparagraph
15 (C) the following:

16 “(D) who has or may have parental rights
17 with respect to a child,”; and

18 (2) in subsection (c)—

19 (A) by striking the period at the end of
20 paragraph (3) and inserting “; and”; and

21 (B) by adding at the end the following:

22 “(4) a State agency that is administering a pro-
23 gram operated under a State plan under subpart 1
24 of part B, or a State plan approved under subpart
25 2 of part B or under part E.”.

1 **SEC. 10. PERFORMANCE OF STATES IN PROTECTING CHIL-**
2 **DREN.**

3 The Secretary of Health and Human Services, in con-
4 sultation with the American Public Welfare Association,
5 the National Governors' Association, and persons or orga-
6 nizations devoted to child advocacy, shall—

7 (1) develop a set of outcome measures (includ-
8 ing length of stay in foster care, number of foster
9 care placements, and number of adoptions) that can
10 be used to assess the performance of States in oper-
11 ating child protection and child welfare programs
12 pursuant to parts B and E of title IV of the Social
13 Security Act to ensure the safety of children;

14 (2) to the maximum extent possible, the out-
15 come measures should be developed from data avail-
16 able from the Adoption and Foster Care Analysis
17 and Reporting System;

18 (3) develop a system for rating the performance
19 of States with respect to the outcome measures, and
20 provide to the States an explanation of the rating
21 system and how scores are determined under the
22 rating system;

23 (4) prescribe such regulations as may be nec-
24 essary to ensure that States provide to the Secretary
25 the data necessary to determine State performance
26 with respect to each outcome measure, as a condi-

1 tion of the State receiving funds under part E of
2 title IV of the Social Security Act;

3 (5) on May 1, 1999, and annually thereafter,
4 prepare and submit to the Congress a report on the
5 performance of each State on each outcome meas-
6 ure, which shall examine the reasons for high per-
7 formance and low performance and, where possible,
8 make recommendations as to how State performance
9 could be improved.

10 **SEC. 11. AUTHORITY TO APPROVE MORE CHILD PROTEC-**
11 **TION DEMONSTRATION PROJECTS.**

12 Section 1130(a) of the Social Security Act (42 U.S.C.
13 1320a–9(a)) is amended by striking “10” and inserting
14 “15”.

15 **SEC. 12. TECHNICAL ASSISTANCE.**

16 (a) IN GENERAL.—The Secretary of Health and
17 Human Services may, directly or through grants or con-
18 tracts, provide technical assistance to assist States and
19 local communities to reach their targets for increased
20 numbers of adoptions and, to the extent that adoption is
21 not possible, alternative permanent placements, for chil-
22 dren in foster care.

23 (b) LIMITATIONS.—The technical assistance provided
24 under subsection (a) shall support the goal of encouraging
25 more adoptions out of the foster care system, when adop-

1 tions promote the best interests of children, and shall in-
2 clude the following:

3 (1) The development of best practice guidelines
4 for expediting termination of parental rights.

5 (2) Models to encourage the use of concurrent
6 planning.

7 (3) The development of specialized units and
8 expertise in moving children toward adoption as a
9 permanency goal.

10 (4) The development of risk assessment tools to
11 facilitate early identification of the children who will
12 be at risk of harm if returned home.

13 (5) Models to encourage the fast tracking of
14 children who have not attained 1 year of age into
15 pre-adoptive placements.

16 (6) Development of programs that place chil-
17 dren into pre-adoptive families without waiting for
18 termination of parental rights.

19 (c) LIMITATIONS ON AUTHORIZATION OF APPRO-
20 PRIATIONS.—To carry out this section, there are author-
21 ized to be appropriated to the Secretary of Health and
22 Human Services not to exceed \$10,000,000 for each of
23 fiscal years 1998 through 2000.

1 **SEC. 13. COORDINATION OF SUBSTANCE ABUSE AND CHILD**
2 **PROTECTION SERVICES.**

3 Within 1 year after the date of the enactment of this
4 Act, the Secretary of Health and Human Services, based
5 on information from the Substance Abuse and Mental
6 Health Services Administration and the Administration
7 for Children and Families in the Department of Health
8 of Human Services, shall prepare and submit to the Com-
9 mittee on Ways and Means of the House of Representa-
10 tives and the Committee on Finance of the Senate a report
11 which describes the extent and scope of the problem of
12 substance abuse in the child welfare population, the types
13 of services provided to such population, and the outcomes
14 resulting from the provision of such services to such popu-
15 lation. The report shall include recommendations for any
16 legislation that may be needed to improve coordination in
17 providing such services to such population.

18 **SEC. 14. CLARIFICATION OF ELIGIBLE POPULATION FOR**
19 **INDEPENDENT LIVING SERVICES.**

20 Section 477(a)(2)(A) of the Social Security Act (42
21 U.S.C. 677(a)(2)(A)) is amended by inserting “(including
22 children with respect to whom such payments are no
23 longer being made because the child has accumulated as-
24 sets, not to exceed \$5,000, which are otherwise regarded
25 as resources for purposes of determining eligibility for
26 benefits under this part)” before the comma.

1 **SEC. 15. EFFECTIVE DATE.**

2 (a) IN GENERAL.—The amendments made by this
3 Act shall take effect on October 1, 1997.

4 (b) DELAY PERMITTED IF STATE LEGISLATION RE-
5 QUIRED.—In the case of a State plan under part B or
6 E of title IV of the Social Security Act which the Secretary
7 of Health and Human Services determines requires State
8 legislation (other than legislation appropriating funds) in
9 order for the plan to meet the additional requirements im-
10 posed by the amendments made by this Act, the State plan
11 shall not be regarded as failing to comply with the require-
12 ments of such part solely on the basis of the failure of
13 the plan to meet such additional requirements before the
14 1st day of the 1st calendar quarter beginning after the
15 close of the 1st regular session of the State legislature that
16 begins after the date of the enactment of this Act. For
17 purposes of the previous sentence, in the case of a State
18 that has a 2-year legislative session, each year of such ses-
19 sion shall be deemed to be a separate regular session of
20 the State legislature.

○